

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the amendments above and the following remarks. Claims 1-3, 5-12 and 15-18 are pending of which claims 1, 8 and 15 are independent. Claim 4 is canceled herein and claims 13-14 and 19-20 were previously canceled.

Claims 1-12 and 15-18 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Clarke, Jr. et al. (US 2004/0221038).

Examiner Interview Conducted

Examiner Swearingen is thanked for the telephonic interview conducted on March 10, 2009 with the Applicants' representative, Ashok Mannava. Examiner Swearingen agreed the amendments overcome the rejection under 35 U.S.C. §102(e) over Clarke. Examiner Swearingen indicated that a single account in Clarke may be considered a user class. However, it was agreed the account of Clarke is not used to generate a contract. It was also agreed that support for the amendments is at least provided in originally filed claim 4.

Claim Rejection Under 35 U.S.C. §102

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221

USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the cited reference fails to anticipate the claimed invention and, thus, the claimed invention is distinguishable over the cited reference.

Claims 1-12 and 15-18 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Clarke, Jr. et al. (US 2004/0221038).

Independent claims 1 and 8 have been amended to recite determining a user class for an end user, consulting one or more user class authorization policy files to determine resource allocation policies for the end user's user class, and generating a contract based on the end user's class and the resource allocation policies for the end user's class.

Some of these features were recited in canceled claim 4. Support for these features is provided on page 5, lines 4-13, the description of figure 3 on page 6.

Clarke fails to teach these features. Clarke fails to teach SLA contract generation based on user class. The rejection alleges class information is disclosed in paragraphs 36 and 41 of Clarke. Paragraph 36 of Clarke states the system administrator controls all the user accounts on the dedicated computer systems. However, Clarke does not disclose the system administrator determines allocation policies and generates SLAs based on a user class. No user classes are disclosed in Clarke.

Paragraph 41 describes the type of data that is aggregated and stored in Clarke. This data is eventually used to make resource allocation decisions. See paragraphs 55-58 of

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Clarke. However, Clarke does not disclose the aggregated data includes allocation policies and SLAs determined based on an end user's class.

Independent claim 15 recites features similar to claims 1 and 8 described above, which are not taught by Clarke. Accordingly, claims 1-3, 5-12 and 15-18 are believed to be allowable.

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Conclusion

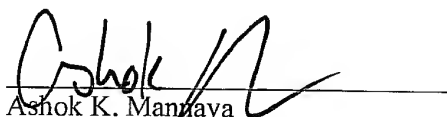
In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: March 11, 2009

By


Ashok K. Mannava
Registration No.: 45,301

MANNAVA & KANG, P.C.
11240 Waples Mill Road
Suite 300
Fairfax, VA 22030
(703) 652-3822
(703) 865-5150 (facsimile)